IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4536 OF 2005

Tanaji Satuppa Waghmare ..Petitioner

Vs.

Krishna Satuppa Patil & Ors. .. Respondents

Mr.G.S.Godbole with Mr.P.R.Arjunwadkar for the petitioner

Mr.A.Y.Sakhare with Mr.S.V.Sadavarte for respondent no.1

WITH

WRIT PETITION NO.6996 OF 2005

Krishna Satuppa Patil ..Petitioner

Vs.

Tanaji Satuppa Vaghamare and Ors. .. Respondents

Mr.A.Y.Sakhare, Sr.Advocate with Mr.S.V.Sadavare for the petitioner

Mr.G.S.Godbole with Mr.P.R.Arjunwadkar for the respondents

WITH

SECOND APPEAL NO. 257 OF 2004

Krishna Satuppa Patil ..Petitioner

Vs.

Tanaji Satuppa Vaghamare and Ors. .. Respondents

Mr.A.Y.Sakhare, with Mr.S.V.Sadavarte for the Appellant

Mr.G.S.Godbole with Mr.P.R.Arjunwadkar for the respondent no.1

CORAM: S.U.KAMDAR, J
DATE : 19TH DECEMBER, 2005

ORAL JUDGMENT:

1. All these three matters are in respect of the property being Gat No. 174 admeasuring 2 Hector 83.9 Ares situated at Village Tevurvadi, Tal.Chandgad, District Kolhapur arising between the same parties and thus are disposed of by the present common judgement. The learned counsel for both the sides have agreed that the decision in Writ Petition No.6996 of 2005 shall govern the other Writ Petition No.4536 of 2005 and second Appeal No.257 of 2004.

2. The petitioner in this writ petition is claiming to be a tenant in possession and it is his case that he was inducted as a tenant prior to 1988 in terms of the provision of The Bombay Tenancy and Agricultural Lands Act, 1948 and since 1988 he is

cultivating the suit land till today. The original owner of the said property being Domiyav Kaitan Shirodkar filed a suit in Civil Court being No.116 of 1988 for perpetual injunction. According to the petitioner, the said suit came to be dismissed and no appeal was preferred therefrom. Thus, the order and judgement in Civil Suit No.116 of 1988 has become final. It is the case of the petitioner that in 1989 the Survey Officer acknowledged that the petitioner is in possession of the said property and recorded the name of the petitioner in 7/12 extract as the tenant in possession of the suit property. It is the case of the petitioner that sometime in or about 1997 the said deceased sold the land to respondent no.1 being Tanaji Satuppa Vaghamare. In 1998 the respondent no.1 obstructed the possession of the petitioner and therefore the petitioner has filed the suit being Civil Suit No.27 of 1998 interalia claiming declaration that he is in possession of the property and is a lawful tenant and injunction that the petitioners possession should be protected and he should not be dispossessed and his possession should not be obstructed. In 1998 the petitioner

also filed an application under the provision of section 70(B) of the Bombay Tenancy and Agricultural Lands Act, 1948 before the Tahsildar claiming to be a tenant in respect of the suit property and for the determination of the issue whether the petitioner is a tenant or not under the provision of The Bombay Tenancy and Agricultural Lands Act, 1948. By order dt.14.8.01, the Tahsildar after enquiry allowed the application of the petitioner and declared the petitioner as a tenant. Against the said order, an appeal was preferred being appeal no.19 of 2001. By an order dt.22.7.02 the appeal was allowed. Order of Tahsildar was set aside and the petitioners application of declaration of tenant has been rejected. The petitioner thereafter moved a Revisional Application being Revisional Application no.23 of 2002. By an order dt.25.8.05 the Divisional Commissioner, Pune has dismissed the said application against which the said writ petition being 6996 of 2005 is filed interalia claiming that the dismissal of the revision was bad in law and the petitioner is entitled to be declared as a tenant in respect of the suit

property.

3. Simultaneously, the proceeding under the Land Revenue Code was also going on. The respondent no.1 being the petitioner in Writ Petition No.4536 of 2005 purchased the property by registered sale deed dt.21.4.97 and applied for entering his name for acquiring right of the suit property and his name was entered by mutation entry no.369 dt.2.9.87. By an order dt.26.6.98 passed by the Mandal Adhikari Office, Kowad, Tal. Chandgad, the said Mutation Entry of respondent no.1 was cancelled and thereafter an appeal was preferred before the Sub Divisional Officer who by an order and Judgement dt.26.1.03 set aside the order of the Mandal Adhikari dt.26.6.98 and sanctioned the Mutation Entry no.369 dt.2.9.97. On 6.12.03 the petitioner preferred an appeal before the Additional Commissioner, Pune being Second Appeal No.58 of 2003 and by an order dt.6.12.03 the said Second Appeal was dismissed. The petitioner thereafter preferred the revisional application before the Assistant Commissioner, Pune challenging the order dt.6.12.03 and by an order dt.12.4.05 the

Assistant Commissioner Pune allowed the Revision Application and has set aside the mutation entry no.369 dt.2.9.97 in favour of the respondent no.1 whose name was entered in the Revenue Record pursuant to the purchase of property from the original owner. It is this order of the Divisional Commissioner, Pune which is the subject matter of challenge in Writ Petition No.4536 of 2005.

4. The Civil proceedings which were initiated by suit preferred by the petitioner were also culminated by filing the Second Appeal in this court being Second Appeal No.257 of 2004. In the said matter, the petitioner was the original plaintiff in Special Civil Suit no.27 of 1998 which was filed by him for declaration and injunction stating that he is in possession prior to 1988 and / or originally inducted as a tenant and secondly prayed that his possession should be protected. The trial court dismissed the suit and thereafter an appeal was also preferred which also came to be dismissed by the lower appellate court by passing a judgement and order dt.30.12.03. The original plaintiff has thereafter preferred the second

appeal raising substantial question of law whether the Trial Court and the Lower Court of appeal were justified in going into an issue of tenancy when in fact the tenancy proceedings were pending before the Tenancy Court under the provisions of section 70(b) of the Bombay Tenancy and Agricultural Lands Act, 1948. Pending the said appeal this court by order dt.7.7.05 directed the Tenancy Court to adjudicate and decide the issue of tenancy and consequently thereupon the said issue has been decided against the petitioner and it has been challenged in the said Writ Petition No.6996 of 2005.

5. Thus, the issue is of a tenancy. The tenancy court in its judgement has held that the petitioner has failed to establish that he is in possession nor has been able to establish that he has paid rent to the landlord and has not produced any rent receipt and thus, the petitioner having failed to establish the tenancy, cannot be declared as a tenant in respect of the suit property.

6. Mr.Sakhare, the learned counsel for the

petitioner has contended that the finding given by the tenancy court is erroneous in law. He has taken me through the impugned judgement and has contended that on facts he is able to establish the possession because the revenue entries are in his favour. He has also pointed out that he has produced a letter from the original landlord interalia indicating that he has paid the rent and there is a valid rent receipt in his favour. He has also relied upon the entries in the Revenue Record to show his possession of the said property. On perusal of the order passed by the Divisional Commissioner it is clear that the petitioner has totally failed to establish that he is a tenant not he has been able to establish that he is in possession of the suit property. The authorities under tenancy proceedings has held that the petitioner is claiming to be in possession since 1988 but he has no documents to show payment of rent. It has also been pointed out that the reliance placed on the Civil Suit No.116 of 1998 against the original landlord which was decided in the year 2002 is also misplaced because the respondent no.1 was not a party to the suit

proceedings. The learned counsel has pointed out that both the Civil Court and the tenancy court have given a concurrent finding that the petitioner is not in possession of the suit property. He has pointed out that merely by the entries in the Revenue record deemed tenancy cannot be established.

7. He has also pointed out that though the petitioner is claiming to be in possession as a tenant since 1988 still he never made any application under section 32(O) of the Bombay Tenancy and Agricultural Lands Act, 1948 claiming the right of purchase of the said property. In so far as the said letter of tenancy is concerned the finding is given by the authority that what is produced before the trial court was only the photocopy supposed to have been issued from the original landlord and not any rent receipt. It was also pointed out that the said letter is also interpolated. The said document was not proved by the petitioner by examining the landlord or through any other method of secondary evidence. From the photocopy it was clear that the word 'rent' has

been inserted by striking out another word and thus the said copy of the letter cannot be relied upon to establish the right of the petitioner as a tenant. The aforesaid finding of the trial court cannot be faulted in the light of the fact that petitioner has failed to produce any rent receipt indicating or showing payment of rent by the petitioner to the original landlord. The said photocopy letter produced cannot be termed that it establishes a tenancy in respect of the said property. The petitioner has not produced any proof of payment of rent to the original landlord and therefore the petitioner has miserably failed to show that there is a tenancy in his favour. The petitioner has also failed to establish by cognet material his actual physical possession of the said property.

8. In so far as tenancy is concerned, it has also been pointed out that the case of the petitioner is inconsistent. The oral deposition before the trial court in which he has claimed that tenancy is from 1980 whereas before the tenancy court he has claimed tenancy from 1988-89. I am of

the opinion that the aforesaid finding of facts before the Divisional Commissioner, Pune is based on material.

9. In so far as possession is concerned, nothing is produced which shows that the petitioner is in actual physical possession of the property save and except reliance placed on mutation entry which is the subject matter of pending writ petition no.4536 of 2005. It has been pointed out that even the said revenue court proceedings have not established any possession and infact the Civil Court has given a finding that the petitioner is not in possession. Even before me the only document which has been sought to be produced by the petitioner in support of his case that he is in possession from 1980 is only the land revenue records. It is well settled that land revenue records cannot be treated as final and are always subject to the final outcome of the suit. The suit which was filed before the trial court by the petitioner claiming that petitioner is in possession is dismissed and appeal therefrom is also dismissed. In that view of the matter, it is

not possible to hold that the petitioner is in possession of the said property. In my opinion, the petitioner having failed to establish either the payment of rent or being in possession of suit property, the tenancy of the petitioner is obviously not established. It is now well settled that to establish the tenancy a person must prove that he is in possession of the property and consequently he is paying the rent.

10. In the present case, both the Civil Court as well as the Tenancy proceedings have given concurrent findings that neither the petitioner has established that he has paid rent nor has established that the petitioner is in possession of the suit property. I am of the opinion that no fault can be found in the finding of fact by the lower court that the petitioner is neither in possession of property nor has paid any rent to establish his tenancy. I am of the opinion that though reappointment of material and evidence before the courts below is not permitted in the writ jurisdiction but still embarking thereupon. I am not able to persuade myself that the finding of

facts recorded by the courts below is erroneous or any other conclusion or view is possible. In that light of the matter, I am of the opinion that the Writ Petition No.6996 of 2005 is required to be dismissed. The same is accordingly dismissed.

11. In so far as Writ Petition No.4536 of 2005 is concerned, on the finding given by me in Writ Petition No.6996 of 2005, the writ petition no. 4536 of 2005 must succeed. The petition is made absolute accordingly. Impugned order dt.25.8.05 is quashed and set aside and mutation entry no.369 of 2.9.97 is confirmed.

12. In so far as second appeal is concerned in view of the fact that tenancy proceedings having been decided by the tenancy court the said so called question of law raised by the petitioner does not survive any further. In that view of the matter there is no merit in the second appeal. The second appeal is therefore also required to be dismissed. In view of the dismissal of Second Appeal, Civil Application No.250 of 2004 and Civil Application No.1065 of 2005 also fails and the same

are also dismissed. However, parties should bear their own costs.